# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## SPECIAL CIVIL APPLICATION No. 2141 of 2002

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE AKIL KURESHI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**CHIEF OFFICER - Petitioner(s)**

**Versus**

**STATE OF GUJARAT & 1 - Respondent(s)**

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**Appearance :**

MR SK JHAVERI for Petitioner(s) : 1,MS JIRGA D JHAVERI for Petitioner(s) : 1,
MR PD BHATE, LD AGP Respondent(s) : 1,
MR VIRENDRA BAHETI for Respondent(s) : 2,

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**CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI**

**Date : 22/09/2005**

**ORAL JUDGMENT**

1.In the present petition, the petitioner Chief Officer of Bilimora Nagarpalika has challenged the legality of an Order dated 25.07.2000 passed by the controlling

authority under the Payment of Gratuity Act(hereinafter referred to as the said Act).

2. It is not in dispute that the respondent No. 2 had superannuated after long service with the petitioner. It is also not in dispute that he is entitled to receive gratuity on account of his service rendered. Since he was not paid the gratuity, he approached the Controlling Authority. Controlling Authority applied the provisions of the said Act and ordered payment of gratuity amount of Rs. 132941 with 12 % interest from 29.10.1999. This order has been challenged by the petitioner Nagarpalika mainly on the ground that the employees of the Nagarpalika are governed by the rules called Bilimora Municipality Gratuity Rules, which have been sanctioned by the State Government in exercise of powers under Section 271 of Gujarat Municipalities Act, 1963 and when such Rules are in operation, by virtue of Section 2(e), which defines term employee, employees of petitioner Nagarpalika would not be governed by the provisions of the said Act, insofar as their claim for gratuity is concerned.

3. Learned Advocate Shri Virendra S. Baheti appearing for the respondent No. 2 submitted that there is no dispute

about the length of service of the said respondent. He submitted that even if the rules of Nagarpalika are applied, as per Rule 6 (iv) of the Bilimora Municipality Gratuity Rules, respondent No. 2 is entitled to receive gratuity amount in excess of Rs. 1 Lakh. He submits that the respondent No.2 is prepared to accept his gratuity as per the said Rules.

4. In view of the above situation, it is not necessary to decide the question, whether the respondent No. 2 is governed by the provisions of the gratuity rules formulated by the petitioner Nagarpalika or by the provisions of the said Act.

5. Learned Advocate for respondent No. 2 however, submitted that respondent No. 2 has been paid gratuity amount of Rs. 30,000/- only so far. Ms. Jhaveri, appearing for the petitioner submitted that payment of Rs. 30,000/- was an ad hoc payment towards gratuity and the petitioner would be paying the remaining amount of gratuity of the respondent No. 2 as per the rules of the Nagarpalika as expeditiously as possible. In view of this situation while setting aside the order passed by the Controlling Authority, it is provided that the respondent No. 2 shall approach the petitioner by

giving calculation of his gratuity entitlement as per the gratuity rules of the petitioner Nagarpalika. The petitioner shall release the gratuity of the respondent No. 2 in the same manner as expeditiously as possible. It is stated that on account of financial difficulties, their other employees who have retired, whose gratuity is also being paid periodically, respondent No. 2 shall be treated similarly and the petitioner shall endeavour to discharge its gratuity liability as expeditiously as possible. The periodical payment shall start from the date of receipt of a copy of this order.

6. With these directions, the petition is disposed of. Rule made absolute to the above extent. No order as to costs.

Direct service is permitted.

**(Akil Kureshi, J.)**

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